for public use without reasonable compensation therefor. The plaintiff had been paid an inadequate amount authorized by the statute as interpreted by the postal authorities. *Held,* that recovery should be denied. Brandeis, J., *dissenting. New York, New Haven and Hartford R. R. v. United States* (1919) 40 Sup. Ct. 67.

The plaintiff, postmaster in a village situated on the defendant's railroad, carried the mail bags four times a day for several years from the station to the post-office. The agents of the defendant knew that the plaintiff thought this was part of his official duties. On learning that the railroad was paid according to contract for the services which he was rendering, the plaintiff ceased the carrying and sued for the value of his services. *Held,* that he should recover. *Blackwood v. Southern Ry.* (1919, N. C.) 100 S. E. 610.

In the first case the court decided that the statute governing the compensation to be paid for carrying the mail justified the interpretation put upon it by the postal authorities. And the plaintiff voluntarily accepted and performed the service with knowledge of what the United States intended to pay, and of the method used to estimate compensation. Further, it was not required by law to carry the mail. See *Eastern R. R. v. United States* (1889) 129 U. S. 391, 395, 9 Sup. Ct. 320, 321. Had the United States, after the rendition of the service, made an express promise to pay an additional sum, such promise would not be binding. *Cf. Roscorla v. Thomas* (1842) 3 Q. B. 234; *cf. Davis v. Morgan* (1903) 117 Ga. 504, 43 S. E. 732. Since it could not be held on an express promise subsequently made, *a fortiori* it could not be held on one implied in fact or on a quasi-contractual duty imposed by law without consent. But in the second case there was nothing which tended in any way to show that the plaintiff was working for any liquidated amount. Both cases seem correct, and illustrate the difference between services performed for a definite amount, no matter how small, and those rendered without a definite compensation in view.

QUASI-CONTRACTS—MISTAKE AS TO EXISTENCE OF A CONTRACT.—A Spanish concession to the claimant for the construction and operation of telegraphic lines in the Philippine Islands provided for reduced rates for all official messages, a tax to be paid to the government on all receipts from messages transmitted over these cables, and payment to the claimant by the government of an annual subsidy. The United States government, in taking over the Philippine Islands, never acted on these concessions. It agreed in 1899, through its Secretary of War, to use the cables at the "established" rates; it was charged the reduced rates provided for in the concessions. In 1905, the claimant *voluntarily* paid into the treasury of the Philippine government $23,000 as taxes on receipts computed under the concession requirements. The United States government never received nor demanded this money, nor did it pay any subsidy, as specified in the concession. The claimant filed a petition in the Court of Claims against the United States government to recover $440,000, the amount of subsidy provided for in the concession. *Held,* that recovery should not be allowed. *Eastern Extension etc. Co. v. United States* (1920) 40 Sup. Ct. 168.

In accord with the claimant's theory that there was a true contract implied in fact, the court based its decision chiefly on the lack of legal power in the government agents concerned in the transactions since 1899 to place the United States under contractual duties. However, these agents were empowered to send these messages. And though no contract existed in fact, yet it is submitted that a non-contractual right might have arisen in the instant case. The true basis of a right and duty in quasi-contract is the receipt of a benefit by the defendant which it is inequitable for him to retain. *Underhill v. Rutland R. R.* (1916) 90 Vt. 462, 98 Atl. 1017; see Corbin, *Quasi Contractual Obligations* (1912) 21 YALE LAW JOURNAL, 533. The claimants erroneously believed that

the United States was under contract to continue the subsidies and for that reason charged special reduced rates. If this mistake had been reasonable and had resulted in an uncompensated enrichment of the defendant, a recovery should have been allowed. *Cf. Turner v. Webster* (1880) 24 Kan. 38; see Thurston, *Cases in Quasi Contract* (1916) 119. But the court found no fault on the part of the United States, and it did not appear that the rates demanded and paid were not a reasonable return for the services. Hence the result is clearly correct, though the basis of the decision might better have been, not the absence of a contract duty *in fact*, but that, though a mistake existed in the plaintiff's mind, yet no duty would be implied *in law* because that mistake was found to have no reasonable basis, and to result in no unjust enrichment of the defendant. It would seem, however, that a recovery of the $23,000 might be allowed against the Philippine government, since this was paid under a mistake as to the existence of a contract.

RELEASE—FRAUD—RESCISSION—TENDER.—There were two contracts for the sale of two different allotments of stock of the same corporation. In the second it was stipulated as part of the consideration of the transfer that the defendant vendor should never be "liable," directly or indirectly, for any claim of any sort or description growing or arising out of either the first or the second sale of stock to the plaintiff vendee. The defendant had made certain fraudulent misrepresentations, concealments, and omissions in both transactions which induced the plaintiff to purchase. The plaintiff brought an "action in deceit and for breach of contract." The defendant pleaded the release. *Held*, that the plaintiff should not recover, because tender to the defendant of the consideration for the release was a condition precedent to the plaintiff's right of action. Gardner, J., *dissenting*. *Barbour v. Poncelor* (1919, Ala.) 83 So. 130.

A party has the power to avoid by rescission a release obtained from him by fraud. See Anson, *Law of Contract* (1919, 3d Am. ed. by Corbin) 258, note 2. Most courts hold that a tender of the consideration received for the release is a condition precedent to the defrauded party's bringing suit on the cause of action covered by the release. *Hill v. Northern Pac. Ry.* (1902, C. C. A. 9th) 113 Fed. 914; *Swan v. Great Northern Ry.* (1918, N. D.) 168 N. W. 657; *Gilmore v. Western Electric Co.* (1919, N. D.) 172 N. W. 111; *contra, Hogarth v. Grundy & Co.* (1917) 256 Pa. 451, 100 Atl. 1001; *cf. Baird v. Pacific Electric Ry.* (1919, Calif. App.) 179 Pac. 449. It has been held in such a case, however, that if not paid before suit, the amount of the consideration may be deducted from the plaintiff's verdict. *Franklin v. Webber* (1919, Ore.) 182 Pac. 819; *contra, Swan v. Great Northern Ry., supra.* This view would seem inapplicable where the consideration was something other than money. Some early cases distinguished between fraud in the procurement of the execution of a release, which they permitted to be attacked both at law and in equity, and fraud in the consideration for the release, against which equity alone would relieve. *Cf. Homuth v. Metropolitan St. Ry.* (1895) 129 Mo. 629, 31 S. W. 903. This distinction has been discarded by a federal court. See *Wagner v. National Life Ins. Co.* (1898, C. C. A. 6th) 90 Fed. 395, 404. And it seems that where the setting aside of a release upon the ground of fraud is sought in equity, a tender of the consideration given therefor need not be made before the action is commenced. See *Wangen v. Upper Iowa Power Co.* (1918, Iowa) 169 N. W. 668, 670. In the principal case the return of the stock purchased under the second contract was soundly held to be a condition precedent to any right of action in the plaintiff because consideration for the release was inseparable from the second contract of sale, and hence the whole had to be rescinded.